

## **RESOLUTION 2007-56**

### **A RESOLUTION ADOPTING AN EMERGENCY RULE REGARDING RIVERBOAT, RACINO, AND SUPPLIER LICENSE TRANSFERS**

The Indiana Gaming Commission ("Commission") adopts the following resolution pursuant to the authority granted to it under IC 4-33 and pursuant to 68 IAC 1-2-6.

The Commission has considered the following factors:

1. Pursuant to IC 4-33-4-3 and IC 4-22-2-37.1, the Commission has the authority to adopt emergency rules. The Commission is to commence formal rulemaking procedures after the adoption of the emergency rule regarding license transfers.
2. The passage of House Enrolled Act 1835 ("Act") in the most recent General Assembly authorized horse racetrack permit holders to apply for licenses to operate slot machines alongside their racing businesses. These applications may come before the Executive Director for approval prior to the Commission's September business meeting.
3. To protect the State's interest in authorizing slot machine licenses, the Commission desires to specify that before approving a transfer of an ownership interest in a slot machine licensee or license applicant, the Commission may consider whether the State will share appropriately in the economic benefits endowed upon the interest holder upon transfer.
4. IC 4-33-4-21 authorizes the Commission to adopt rules governing the procedure a person must follow to transfer, sell, or purchase and ownership interest in a license.
5. Pursuant to IC 4-33-4-3(a)(8), the Commission finds that the need for a rule that: (1) includes "gambling game licensees" and "gambling game license applicants" in the regulatory framework for ownership transfers, and (2) specifies that the Commission may consider the extent by which the State benefits economically from a proposed transfer in interest, is immediate and substantial such that the rulemaking procedures under IC 4-22-2-13 through IC 4-22-2-36 are inadequate to address the need, but that the attached emergency rule is likely to address that need.
6. The rule adds the following to the existing transfer procedure:

In determining whether to approve a transfer of an ownership interest under this rule, the commission will consider the extent by which the State would share in any monetary payment to or economic benefit realized by the person divesting the ownership interest.

7. While the emergency rule is in effect, the Commission will proceed with the formal rulemaking procedures set forth in IC 4-22-2 so that the new rule may be formally adopted before the emergency rule expires.
8. The Commission staff will file the adopted emergency rule and submit it for publication with Legislative Services Agency. The emergency rule will become effective upon filing with the

publisher, and will continue to be effective for ninety (90) days thereafter. If necessary, the Commission will renew the effectiveness of the emergency rule for an additional ninety (90) days pending completion of the formal promulgation process.

**NOW, THEREFORE, BE IT RESOLVED BY THE INDIANA GAMING COMMISSION, THAT THE FOLLOWING RESOLUTION IS ADOPTED:**

**SECTION 1: SCOPE**

This resolution applies to Commission members, employees, agents, and riverboat, supplier, and horsetrack slot machine licensees.

**SECTION 2: DEFINITIONS**

The definitions set forth in IC 4-33-2 and 68 IAC apply to this resolution.

**SECTION 3: ADOPTION OF THE EMERGENCY RULE**

Pursuant to IC 4-22-2-37.1, the Commission adopts the attached rule as an emergency rule for the initial ninety (90) day period as well as for the optional ninety (90) day extension period. The Commission further adopts any stylistic, grammatical, typographical, or other non-substantive changes that the Commission or the Legislative Services Agency may make to this emergency rule. The Commission shall submit file the adopted rule and submit it for publication with Legislative Services Agency.

**SECTION 4: EFFECTIVE DATE**

The emergency rule adopted in section 3 of this resolution is to become effective upon filing with the publisher.

**SECTION 5: EXPIRATION DATE**

This resolution expires upon the final expiration of the emergency rule adopted herein.

**ADOPTED, THIS THE 7<sup>TH</sup> DAY OF JUNE, 2007.**

**THE INDIANA GAMING COMMISSION:**

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William W. Barrett, Chair

ATTEST:

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Donald R. Vowels, Secretary

# **TITLE 68 INDIANA GAMING COMMISSION**

LSA Document \_\_\_\_\_(E)

## **DIGEST**

Temporarily amends 68 IAC 5-1-1, 68 IAC 5-1-2, 68 IAC 5-1-3, 68 IAC 5-1-4, 68 IAC 5-1-5, 68 IAC 5-1-6, 68 IAC 5-1-7, 68 IAC 5-2-1, 68 IAC 5-2-2, 68 IAC 5-2-3, 68 IAC 5-2-4, 68 IAC 5-2-5, 68 IAC 5-3-1, 68 IAC 5-3-2, 68 IAC 5-3-3, 68 IAC 5-3-4, 68 IAC 5-3-5 to add the terms gambling game license applicant and gambling game licensee under IC 4-35 where applicable. Temporarily amends 68 IAC 5-1-1 to add a definition of "gambling game" to parallel IC 4-35-2-5. Temporarily amends 68 IAC 5-1-2 and 68 IAC 5-2-2 to add criteria for transfer regarding positive economic impact on the State of Indiana.

Authority: IC 4-33-4-3(8); IC 4-35-4-2(a)(6); IC 4-35-5-4; 4-35-5-7. Effective \_\_\_\_\_, 2007.

### **SECTION 1. (a) THIS SECTION SUPERCEDES 68 IAC 5-1-1.**

**(b) This rule applies to publicly traded corporations holding riverboat owner's licenses, certificates of suitability, gambling game licenses, or suppliers licenses in Indiana and riverboat licensees, riverboat license applicants, gambling game licensees, gambling game license applicants, and supplier licensees owned directly or indirectly by a publicly traded corporation, whether through a subsidiary or intermediary company thereof, where such ownership interest directly or indirectly is, or will be upon approval by the commission, five percent (5%) or more of the entire riverboat licensee, riverboat license applicant, gambling game licensee, gambling game license applicant, or supplier licensee.**

**(c) The following definitions apply throughout this rule:**

**(1) "Applicant" means a person who is seeking permission from the commission to obtain an ownership interest in a riverboat licensee, a gambling game licensee, a gambling game license applicant, a supplier licensee, or a riverboat license applicant.**

**(2) "Gambling game" has the same meaning as in IC 4-35-2-5.**

**(3) "Publicly traded corporation" means the following:**

**(A) Any person, other than an individual, that:**

**(i) has one (1) or more classes of voting securities registered under Section 12 of the Securities and Exchange Act of 1934 (15 U.S.C. 78a et seq.);**

**(ii) issues securities and is subject to Section 15(d) of the Securities and Exchange Act of 1934 (15 U.S.C. 78a et seq.); or**

**(iii) has one (1) or more classes of voting securities exempted from the registration requirements of Section 5 of the Securities Act of 1933 (15 U.S.C. 78a et seq.) due to an exemption contained in Section 3(a)(10), 3(a)(11), or 3(c) of the Securities Act of 1933 (15 U.S.C. 78a et seq.); or any other company required to file under the Securities and Exchange Act of 1934.**

**(B) Any person, other than an individual, created under the laws of a foreign country that:**

**(i) has one (1) or more classes of voting securities registered on that country's securities exchange or over-the-counter market; and**

**(ii) the commission has determined that the business entity's activities are regulated in a manner that protects the investors and Indiana.**

**The term includes any person, other than an individual, that has securities registered or is an issuer under this definition solely because it guaranteed a security issued by an affiliate under a public offering and is considered by the Securities and Exchange Commission to be a co-issuer of a public offering of securities under Rule 140 of the Securities and Exchange Act of 1934 (15 U.S.C. 78a et seq.).**

**(d) A direct or indirect ownership interest of five percent (5%) or more in a riverboat licensee, a supplier licensee, a gambling game licensee, a gambling game license applicant, or a riverboat license applicant that is a publicly traded corporation may only be transferred in accordance with this rule.**

**SECTION 2. (a) THIS SECTION SUPERCEDES 68 IAC 5-1-2.**

**(b) An applicant for approval of a transfer of an ownership interest must complete and submit the appropriate forms prescribed by the commission.**

**(c) Application procedures shall be as follows:**

**(1) An applicant to receive an ownership interest is seeking a privilege and assumes and accepts any and all risk of adverse publicity, notoriety, embarrassment, criticism, or other action or financial loss that may occur in connection with the application process or the public disclosure of information requested. The applicant expressly waives any claim for damages that may result from the application process.**

**(2) Any misrepresentation or omission made with respect to the application may be grounds for denial of the application.**

**(3) An applicant must submit six (6) bound and three (3) unbound copies of the application for transfer of an ownership interest.**

**(4) An applicant must submit three (3) bound and two (2) unbound copies of the Personal Disclosure Form 1 under 68 IAC 2-3-4(d) that have been completed by the substantial owners, key persons, or other persons deemed necessary by this rule or by the commission to allow the commission to ensure that the applicant meets the statutory criteria for licensure set forth in the Act and this title.**

**(5) An application shall be deemed filed when the completed application forms, including all required documents, materials, and photographs, and the application fee under section 3 of this rule have been submitted and the commission has stamped the application as received. A background investigation will not be initiated by the commission until a complete application is received by the commission.**

**(6) The completed application must be filed in the commission's office in Indianapolis, Indiana.**

**(7) An applicant is under a continuing duty to disclose any changes in the information submitted to the commission.**

**(d) An applicant to receive an interest in a gambling game licensee, a gambling game license applicant, riverboat licensee, or a riverboat license applicant must present evidence that it meets or possesses the standards, qualifications, or criteria under 68 IAC 2-1-5(c). The applicant bears the burden of proving its qualifications.**

**(e) In determining whether to approve a transfer of an ownership interest under this rule, the commission will consider the extent by which the State would share in any monetary payment to or economic benefit realized by the person divesting the ownership interest.**

**(f) An applicant to receive an interest in a supplier licensee must present evidence that it meets or possesses the standards, qualifications, or criteria under 68 IAC 2-2-5(c). The applicant bears the burden of proving its qualifications.**

**SECTION 3. (a) THIS SECTION SUPERCEDES 68 IAC 5-1-3.**

**(b) All fees shall be submitted to the commission in the form of a certified check or cashier's check made payable to the state of Indiana.**

**(c) An applicant to receive an ownership interest in a gambling game licensee, a gambling game license applicant, a riverboat licensee, or a riverboat license applicant must pay an investigation fee in the same amount as the application fee for a riverboat owner's license established in 68 IAC 2-1-2(b) with the application.**

**(d) An applicant to receive an ownership interest in a supplier's license must pay an investigation fee in the same amount as the application fee for a supplier's license established in 68 IAC 2-2-2(b) with the application.**

**(e) The investigation fee shall be utilized to conduct the background investigation of the applicant. An additional investigation fee may be assessed to the extent that the cost of the background investigation relating to the applicant exceeds the investigation fee submitted under subsection (c) or (d). The applicant shall be advised by the executive director in writing that an additional investigation fee is required. The letter shall direct the applicant to remit an amount that the executive director has determined is necessary to complete the investigation. Once an applicant is directed to submit an investigation fee in excess of the amount set forth in subsection (c) or the amount set forth in subsection (d), the investigative team conducting the investigation on that applicant shall not finalize the report on the applicant's suitability for obtaining an ownership interest nor submit that report to the commission for consideration until the additional investigation fee is paid by the applicant.**

**(f) In the event an assessed investigation fee exceeds the final cost of the investigation, the excess investigation fee shall be refunded to the applicant.**

**SECTION 4. (a) THIS SECTION SUPERCEDES 68 IAC 5-1-4.**

**(b) Each person (other than an institutional investor who complies with subsection (d)) who, individually or in association with others, acquires, directly or indirectly, the beneficial ownership of:**

**(1) five percent (5%) or more of any class of voting securities of a publicly traded corporation that is required to contain the charter provisions set forth in 68 IAC 4-1-8; or**

**(2) five percent (5%) or more of the beneficial interest in a riverboat licensee, riverboat license applicant, gambling game licensee, gambling game license applicant, or supplier licensee, directly or indirectly, through any class of voting securities of any holding or intermediary company of a riverboat licensee, riverboat license applicant, gambling game licensee, gambling game license applicant, or supplier licensee;**

**shall apply to the commission for a finding of suitability within forty-five (45) days after acquiring the securities. A riverboat licensee, gambling game licensee, or supplier licensee shall notify each person who is subject to this section of its requirements, provided that the obligations of the person subject to this rule are independent of, and unaffected by, the corporation's failure to give notice.**

**(c) Each institutional investor who, individually or in association with others, acquires, directly or indirectly, beneficial ownership of:**

**(1) five percent (5%) or more of any class of voting securities of a publicly traded corporation that is required to contain the charter provisions set forth in 68 IAC 4-1-8; or**

**(2) five percent (5%) or more of the beneficial interest in a riverboat licensee, riverboat license applicant, gambling game licensee, gambling game license applicant, or supplier licensee through any class of voting securities of any holding company or intermediary company of a riverboat licensee, riverboat license applicant, gambling game licensee, gambling game license applicant, or supplier licensee;**

**shall notify the commission within ten (10) business days after the person acquires the securities and files Form 13-D or 13-G with the Securities and Exchange Commission and shall provide additional information and may be subject to a finding of suitability as required by the commission. A riverboat licensee or supplier licensee shall notify each person who is subject to this section of its requirements as soon as the corporation becomes aware of the acquisition, provided that the obligations of the persons subject to this rule are independent of, and unaffected by, the corporation's failure to give notice.**

**(d) An institutional investor who would otherwise be subject to subsection (b) shall, within forty-five (45) days after acquiring the interests set forth in subsection (c), submit the following information to the commission:**

**(1) A description of the institutional investor's business and a statement as to why the institutional investor is within the definition of institutional investor set forth in 68 IAC 1-1-52.**

**(2) A certification made under oath and the penalty of perjury that the voting securities were acquired and are held for investment purposes only and were acquired and are held in the ordinary course of business as an institutional investor and not for the purpose of causing, directly or indirectly, the election of a majority of the board of directors, any change in the corporate charter, bylaws, management, policies, or operations of a riverboat licensee, gambling game licensee, supplier licensee, or affiliate. The signatory shall also explain the basis of his or her authority to sign the certification and to bind the institutional investor to its terms. The certification shall also provide that the institutional investor is bound by and shall comply with the Act (IC 4-33) and this title, is subject to the jurisdiction of the courts of Indiana, and consents to Indiana as the choice of forum in the event any dispute, question, or controversy arises regarding the application of this rule.**

**(3) The name, address, telephone number, and Social Security number of the officers and directors, or their equivalent, of the institutional investor as well as those persons who have direct control over the institutional investors's holdings of voting securities of the riverboat licensee, riverboat license applicant, gambling game licensee, gambling game license applicant, supplier licensee, or affiliate.**

**(4) The name, address, telephone number, and Social Security number or federal tax identification number of each person who has the power to direct or control the institutional investor's exercise of its voting rights as a holder of voting securities of the riverboat licensee, riverboat license applicant, gambling game licensee, gambling game license applicant, supplier licensee, or affiliate.**

**(5) The name of each person who beneficially owns five percent (5%) or more of the institutional investor's voting securities or other equivalent.**

**(6) A list of the institutional investor's affiliates.**

**(7) A list of all securities of the riverboat licensee, riverboat license applicant, gambling game licensee, gambling game license applicant, or supplier licensee that are or were, directly or**

indirectly, beneficially owned by the institutional investor or its affiliates within the preceding one (1) year period, setting forth a description of the securities, the amount of the securities, and the date of the acquisition, sale, or both.

(8) A list of all regulatory agencies with which the institutional investor or any affiliate that beneficially owns voting securities of the riverboat licensee, gambling game licensee, supplier licensee, or affiliate files periodic reports, and the name, address, and telephone number of the person, if known, to contact at each agency regarding the institutional investor.

(9) A disclosure of all criminal sanctions imposed during the preceding ten (10) years. A disclosure of all regulatory sanctions imposed during the preceding ten (10) years and of any administrative or court proceedings filed by any regulatory agency in the preceding five (5) years against the institutional investor, its affiliates, any current officer or director, or any former officer or director whose tenure ended within the preceding twelve (12) months.

(10) A copy of any filing made under 15 U.S.C. 18a with respect to the acquisition or proposed acquisition of voting securities of the riverboat licensee, gambling game licensee, or supplier licensee or affiliate thereof.

(11) Any additional information the commission may request to ensure compliance with the Act and this title.

(e) Each institutional investor who, individually or in association with others, acquires, directly or indirectly, the beneficial ownership of:

(1) fifteen percent (15%) or more of any class of voting securities of a publicly traded corporation that is required to contain the charter provisions set forth in 68 IAC 4-1-8; or

(2) fifteen percent (15%) or more of the beneficial interest in a riverboat licensee, riverboat license applicant, gambling game licensee, gambling game license applicant, or supplier licensee directly or indirectly, through any class of voting securities of any holding company or intermediary company of a riverboat licensee, gambling game licensee, or supplier licensee;

shall apply to the commission for a finding of suitability within forty-five (45) days after acquiring the securities. A riverboat licensee, gambling game licensee, or supplier licensee shall notify each person who is subject to this section of its requirements, provided that the obligations of the person subject to this rule are independent of, and unaffected by, the corporation's failure to give notice.

(f) The commission may require that any applicant for an ownership interest apply for a finding of suitability in accordance with this rule if the commission deems the finding of suitability necessary to ensure compliance with the Act and this title.

(g) The following activities shall be deemed to be consistent with holding voting securities for investment purposes only under subsection (d)(2):

(1) Voting, directly or indirectly, through the delivery of a proxy furnished by the board of directors, on all matters voted on by the holders of such voting securities.

(2) Serving as a member of any committee of creditors or security holders formed in connection with a debt restructuring.

(3) Nominating any candidate for election or appointment to the board of directors in connection with a debt restructuring.

(4) Accepting appointment or election as a member of the board of directors in connection with a debt restructuring and serving in that capacity until the conclusion of the member's term.

**(5) Making financial and other inquiries of management of the type normally made by securities analysts for information purposes and not to cause a change in its management, policies, or operations.**

**(6) Such other activities the commission determines to be consistent with such investment intent.**

**(h) A person who acquires beneficial ownership of any voting security in a riverboat licensee, riverboat license applicant, gambling game licensee, gambling game license applicant, supplier licensee, holding company, or intermediary company of any riverboat licensee, riverboat license applicant, gambling game licensee, gambling game license applicant, or supplier licensee created under the laws of a foreign country shall file such reports as the commission may prescribe and is subject to a finding of suitability under the Act and 68 IAC 2-1-5(c).**

**(i) Any person whose application was denied by the commission shall not hold, directly or indirectly, the beneficial ownership of any voting security of a riverboat licensee, riverboat license applicant, gambling game licensee, gambling game license applicant, supplier licensee, holding company, or intermediary company thereof beyond that period of time prescribed by the commission, and must be removed immediately from any position as a director, officer, or employee of such riverboat licensee, riverboat license applicant, gambling game licensee, gambling game license applicant, supplier licensee, holding company, or intermediary company thereof.**

**(j) Subsections (b), (c) and (e) shall not apply to any underwriter during the first ninety (90) days of the underwriting.**

**SECTION 5. (a) THIS SECTION SUPERCEDES 68 IAC 5-1-5.**

**(b) If the commission denies the application to transfer an ownership interest, it shall direct the executive director to issue a notice of denial to the applicant.**

**(c) A riverboat licensee, a gambling game licensee, a gambling game license applicant, a supplier licensee, or a riverboat license applicant who is served with a notice of denial under this rule may request a hearing under 68 IAC 7-1.**

**(d) If the riverboat licensee, gambling game licensee, gambling game license applicant, gambling game license applicant, supplier licensee, or riverboat license applicant does not request a hearing within the time requirements of 68 IAC 7-1, the notice of denial becomes the final order of the commission.**

**(e) Unless specifically stated to the contrary, a notice of denial of an application for transfer under this rule shall not constitute a finding that the applicant is not suitable for licensure.**

**SECTION 6. (a) THIS SECTION SUPERCEDES 68 IAC 5-1-6.**

**(b) Within thirty (30) calendar days of the earlier of either:**

**(1) failure of a riverboat licensee, a gambling game licensee, a gambling game license applicant, a supplier licensee, or a riverboat license applicant to request a hearing under 68 IAC 7-1 after receiving a notice of denial; or**

**(2) the exhaustion of the hearing or appellate process;**

**the riverboat licensee, gambling game licensee, gambling game license applicant, supplier licensee, or riverboat license applicant shall purchase all of the interests held by the applicant who was served with the notice of denial. The applicant who was served with the notice of denial shall sell all of its interest in the license to the riverboat licensee, the gambling game licensee, the gambling game license applicant, the supplier licensee, or the riverboat license applicant within thirty (30) days.**

**(c) The ownership interest shall be purchased at the lesser of:**

- (1) the market price of the ownership interest; or
- (2) the price at which the applicant purchased the ownership interest.

**SECTION 7. (a) THIS SECTION SUPERCEDES 68 IAC 5-1-7.**

**(b) In refusing to grant approval for the transfer of an interest or other involvement with a riverboat licensee, a gambling game licensee, a gambling game license applicant, a supplier licensee, or a riverboat license applicant, the commission may determine that a person is unsuitable for licensure pursuant to the Act and 68 IAC 2-1.**

**(c) After the commission serves a notice of denial to a riverboat licensee, a gambling game licensee, a gambling game license applicant, a supplier licensee, or a riverboat license applicant, that person shall not do the following:**

- (1) Pay, to any person whose application was denied, any dividend or interest upon any voting securities, or any payment or distribution of any kind whatsoever except as permitted by subdivision (4).**
- (2) Recognize the exercise by any person whose application was denied, directly or indirectly, or through any proxy, trust, or nominee, of any voting right conferred by any securities or interest in any securities.**
- (3) Pay to any person whose application was denied any remuneration in any form for services rendered.**
- (4) Fail to pursue all lawful efforts to require the person whose application was denied to relinquish all voting securities, including, if necessary, the immediate purchase of the voting securities by the riverboat licensee, gambling game licensee, or supplier licensee.**

**(d) The commission may initiate a disciplinary action under 68 IAC 13 against a riverboat licensee, a gambling game licensee, a gambling game license applicant, a supplier licensee, or a riverboat license applicant who violates subsection (c).**

**SECTION 8. (a) THIS SECTION SUPERCEDES 68 IAC 5-2-1.**

**(b) This rule applies to all riverboat licensees, gambling game licensees, gambling game license applicants, supplier licensees, and riverboat license applicants that are persons other than publicly traded corporations.**

**(c) The following definitions apply throughout this rule:**

- (1) "Applicant" means a person who is seeking a determination of suitability to hold an ownership interest in a riverboat licensee, a gambling game licensee, a gambling game license applicant, a supplier licensee, or a riverboat license applicant.**
- (2) "Gambling game" has the same meaning as in IC 4-35-2-5.**
- (3) "Publicly traded corporation" means the following:**

**(A) Any person, other than an individual, that:**

- (i) has one (1) or more classes of voting securities registered under Section 12 of the Securities and Exchange Act of 1934 (15 U.S.C. 78a et seq.);**
- (ii) issues securities and is subject to Section 15(d) of the Securities and Exchange Act of 1934 (15 U.S.C. 78a et seq.); or**
- (iii) has one (1) or more classes of voting securities exempted from the registration requirements of Section 5 of the Securities Act of 1933 (15 U.S.C. 78a et seq.) due to an exemption contained in Section 3(a)(10), 3(a)(11), or 3(c) of the Securities Act of 1933 (15 U.S.C. 78a et seq.);**

**or any other company required to file under the Securities and Exchange Act of 1934.**

**(B) Any person, other than an individual, created under the laws of a foreign country that:**

- (i) has one (1) or more classes of voting securities registered on that country's securities exchange or over-the-counter market; and**
- (ii) the commission has determined that the business entity's activities are regulated in a manner that protects the investors and Indiana.**

**The term includes any person, other than an individual, that has securities registered or is an issuer under this definition solely because it guaranteed a security issued by an affiliate under a public offering and is considered by the Securities and Exchange Commission to be a co-issuer of a public offering of securities under Rule 140 of the Securities and Exchange Act of 1934 (15 U.S.C. 78a et seq.).**

**(d) A person that is not a publicly traded corporation may transfer a direct or indirect ownership interest of five percent (5%) or greater in a riverboat licensee, a gambling game licensee, a gambling game license applicant, a supplier licensee, or a riverboat license applicant only in accordance with this rule.**

**(e) The commission may require that any applicant for an ownership interest apply for a finding of suitability in accordance with this rule if the commission deems the finding of suitability necessary to ensure compliance with the Act and this title.**

**(f) The organizational documents of all gambling game licensees, gambling game license applicants, riverboat licensees, and riverboat license applicants that are persons other than publicly traded corporations must contain a provision that transfers of ownership interest in the person may only be made in accordance with this rule. Gambling game license applicants and riverboat license applicants must comply with this subsection prior to the issuance of the interim compliance period.**

**(g) The organizational documents of all supplier licensees that are persons other than publicly traded corporations must contain a provision that transfers of ownership interest may only be made in accordance with this rule. Supplier licensees must comply with this subsection within forty-five (45) days of receiving a permanent supplier's license under 68 IAC 2-2. Each supplier licensee must file one (1) copy of the amended organizational documents within fifty (50) days of receiving a permanent supplier's license.**

#### **SECTION 9. (a) THIS SECTION SUPERCEDES 68 IAC 5-2-2.**

**(b) An applicant for approval of a transfer of an ownership interest must complete and submit the appropriate forms prescribed by the commission. Approval for the transfer must be issued by the commission prior to the applicant obtaining an ownership interest in a gambling game license, a gambling game license applicant, a riverboat owner's license, a riverboat license application, or a supplier's license.**

**(c) Application procedures shall be as follows:**

**(1) An applicant to receive an ownership interest is seeking a privilege and assumes and accepts any and all risk of adverse publicity, notoriety, embarrassment, criticism, or other action or financial loss that may occur in connection with the application process or the public disclosure of information requested. The applicant expressly waives any claim for damages that may result from the application process.**

**(2) Any misrepresentation or omission made with respect to the application may be grounds for denial of the application.**

**(3) An applicant must submit six (6) bound and three (3) unbound copies of the application for transfer of an ownership interest.**

**(4) An applicant must submit three (3) bound and two (2) unbound copies of the Personal Disclosure Form 1 under 68 IAC 2-3-4(d) that have been completed by the substantial owners, key persons, or other persons deemed necessary by this rule or by the commission to allow the commission to ensure that the applicant meets the statutory criteria for licensure set forth in the Act and this title.**

**(5) An application shall be deemed filed when the completed application forms, including:**

**(A) all required documents, materials, and photographs; and**

**(B) the application fee under section 3 of this rule;**

**have been submitted and the commission has stamped the application as received. A background investigation will not be initiated by the commission until a complete application is received by the commission.**

**(6) The completed application must be filed in the commission's office in Indianapolis, Indiana.**

**(7) An applicant is under a continuing duty to disclose any changes in the information submitted to the commission.**

**(d) An applicant to receive an interest in a gambling game licensee, a gambling game license applicant, a riverboat licensee, or a riverboat license applicant must present evidence that it meets or possesses the standards, qualifications, or criteria under 68 IAC 2-1-5(c). The applicant bears the burden of proving its qualifications.**

**(e) In determining whether to approve a transfer of an ownership interest under this rule, the commission will consider the extent by which the State would share in any monetary payment to or economic benefit realized by the person divesting the ownership interest.**

**(f) An applicant to receive an interest in a supplier licensee must present evidence that it meets or possesses the standards, qualifications, or criteria under 68 IAC 2-2-5(c). The applicant bears the burden of proving its qualifications.**

**(g) The gambling game licensee, gambling game license applicant, riverboat licensee, riverboat license applicant, or supplier licensee that is attempting to transfer an ownership interest in the license to an applicant must submit any information deemed necessary by the commission to ensure compliance with the Act and this title.**

**SECTION 10. (a) THIS SECTION SUPERCEDES 68 IAC 5-2-3.**

**(b) All fees shall be submitted to the commission in the form of a certified check or cashier's check made payable to the state of Indiana.**

**(c) An applicant to receive an ownership interest in a gambling game licensee, a gambling game license applicant, a riverboat licensee or a riverboat license applicant must pay an investigation fee in the same amount as the application fee for a riverboat owner's license established in 68 IAC 2-1-2(b) with the application.**

**(d) An applicant to receive an ownership interest in a supplier's license must pay an investigation fee in the same amount as the application fee for a supplier's license established in 68 IAC 2-2-2(b) with the application.**

**(e) The investigation fee shall be utilized to conduct the background investigation of the applicant. An additional investigation fee may be assessed to the extent that the cost of the background investigation relating to the applicant exceeds the investigation fee submitted under subsection (c) or (d). The applicant shall be advised by the executive director in writing that an additional investigation fee is required. The letter shall direct the applicant to remit an amount that the executive director has determined is necessary to complete the investigation. Once an applicant**

is directed to submit an investigation fee in excess of the amount set forth in subsection (c) or the amount set forth in subsection (d), the investigative team conducting the investigation on that applicant shall not finalize the report on the applicant's suitability for obtaining an ownership interest nor submit that report to the commission for consideration until the additional investigation fee is paid by the applicant.

(f) In the event an assessed investigation fee exceeds the final cost of the investigation, the excess investigation fee shall be refunded to the applicant.

**SECTION 11. (a) THIS SECTION SUPERCEDES 68 IAC 5-2-4.**

(b) If the commission denies the application to transfer an ownership interest, it shall direct the executive director to issue a notice of denial to the applicant.

(c) A riverboat licensee, a gambling game licensee, a gambling game license applicant, a supplier licensee, or a riverboat license applicant who is served with a notice of denial under this rule may request a hearing under 68 IAC 7-1.

(d) If the riverboat licensee, gambling game licensee, gambling game license applicant, supplier licensee, or riverboat license applicant does not request a hearing within the time requirements of 68 IAC 7-1, the notice of denial becomes the final order of the commission.

(e) Unless specifically stated to the contrary, a notice of denial of application for transfer under this rule shall not constitute a finding that the applicant is not suitable for licensure.

**SECTION 12. (a) THIS SECTION SUPERCEDES 68 IAC 5-2-5.**

(b) In refusing to grant approval for the transfer of an interest or other involvement with a riverboat licensee, a gambling game licensee, a gambling game license applicant, a supplier licensee, or a riverboat license applicant, the commission may determine that a person is unsuitable for licensure pursuant to the Act and 68 IAC 2-1.

(c) After the commission serves a notice of denial to a riverboat licensee, a gambling game licensee, a gambling game license applicant, a supplier licensee, or a riverboat license applicant, that person shall not do the following:

(1) Pay, to any person found to be unsuitable, any payment or distribution of any kind whatsoever.

(2) Recognize the exercise by any unsuitable person, directly or indirectly, of any ownership or control over the gambling game licensee, gambling game license applicant, riverboat licensee, the riverboat license applicant, or the supplier licensee.

(3) Pay to any unsuitable person any remuneration in any form for services rendered.

(d) The commission may initiate a disciplinary action under 68 IAC 13 against a riverboat licensee, a gambling game licensee, a gambling game license applicant, a supplier licensee, or a riverboat license applicant who violates subsection (c).

**SECTION 13. (a) THIS SECTION SUPERCEDES 68 IAC 5-3-1.**

(b) This rule applies to gambling game licensees, gambling game license applicants, riverboat licensees, riverboat license applicants, or affiliates thereof.

(c) A gambling game licensee, gambling game license applicant, riverboat licensee, riverboat license applicant, or affiliate thereof may enter into debt transactions that total one million dollars (\$1,000,000) or more only in accordance with this rule.

(d) As used in this rule, "debt transaction" means a transaction in which the gambling game licensee, gambling game license applicant, riverboat licensee, riverboat license applicant, or affiliate thereof acquires debt, including, but not limited to, the following:

- (1) Bank financing.
- (2) Private debt offerings.
- (3) Any other transaction that results in the encumbrance of the assets.

(e) The gambling game licensee, gambling game license applicant, riverboat licensee or riverboat license applicant shall stamp or otherwise mark each page of its debt transaction documents that it submits to the commission with the word "CONFIDENTIAL" if the material submitted is not subject to disclosure under IC 4-33, IC 5-14, or both. The gambling game licensee, gambling game license applicant, riverboat licensee or riverboat license applicant shall, at the request of the executive director or the commission, provide a justification explaining the confidential nature of the policies and procedures. The commission or the executive director may determine that the information marked confidential is subject to disclosure under IC 4-33 and IC 5-14, or both.

**SECTION 14. (a) THIS SECTION SUPERCEDES 68 IAC 5-3-2.**

(b) A gambling game licensee, gambling game license applicant, riverboat licensee, riverboat license applicant, or affiliate thereof may not enter into any debt transaction without receiving the approval of the commission.

(c) A gambling game licensee, gambling game license applicant, riverboat licensee, riverboat license applicant, or affiliate thereof shall submit, in writing, a request for approval of a debt transaction. The procedure shall be as follows:

(1) The request for approval must be submitted at least ten (10) days before a scheduled meeting of the commission. The executive director shall place the request for approval of a debt transaction on the agenda of the commission meeting to be held under 68 IAC 1-2-5.

(2) A representative of the gambling game licensee, gambling game license applicant, riverboat licensee, riverboat license applicant, or affiliate thereof shall be present at the commission meeting to answer any questions posed by the commission or the executive director.

(3) The approval of the debt transaction will be discussed, and a decision issued by the commission, at the next business meeting of the commission held under 68 IAC 1-2-5.

(d) The request for approval of a debt transaction shall contain, at a minimum, the following information:

- (1) The names and addresses of all parties to the debt transaction.
- (2) The amount of the funds involved.
- (3) The type of debt transaction.
- (4) The source of the monies obtained by the gambling game licensee, gambling game license applicant, riverboat licensee, riverboat license applicant, or affiliate thereof.
- (5) All sources of collateral.
- (6) The purpose of the debt transaction.
- (7) The terms of the debt transaction.
- (8) All filings that must be submitted to any regulatory agency in association with the debt transaction.
- (9) An executive summary of the debt transaction.
- (10) A legal opinion that the debt transaction does not violate IC 4-33-4-21.

**(11) Any other information deemed necessary by the executive director or the commission to ensure compliance with the Act and this title.**

**SECTION 15. (a) THIS SECTION SUPERCEDES 68 IAC 5-3-3.**

**(b) The gambling game licensee, gambling game license applicant, riverboat licensee, riverboat license applicant, or affiliate thereof shall perform due diligence to ensure that each person the gambling game licensee, gambling game license applicant, riverboat licensee, riverboat license applicant, or affiliate thereof enters into a debt transaction with would be suitable for licensure under the Act and this title.**

**SECTION 16. (a) THIS SECTION SUPERCEDES 68 IAC 5-3-4.**

**(b) If the commission or, if authorized by the commission, the executive director denies approval of a debt transaction, the gambling game licensee, gambling game license applicant, riverboat licensee, riverboat license applicant, or affiliate thereof may not enter into the debt transaction.**

**SECTION 17. (a) THIS SECTION SUPERCEDES 68 IAC 5-3-5.**

**(b) If a gambling game licensee, gambling game license applicant, riverboat licensee, riverboat license applicant, or affiliate thereof fails to comply with this rule, the commission may initiate a disciplinary action under 68 IAC 13-1.**